

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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AUG 15 2022

CLERK, U.S. DISTRICT COURT
ST. PAUL, MINNESOTA

Susanne Aspley, as the Trustee
of the Estate of LaVonne Aspley, Decedent

Case No. _____
22-cv-2005 PJS/JFD

Plaintiff

vs.

Tim Walz, Governor of Minnesota

The State of Minnesota

Jan Malcolm, Minnesota Dept of Health

Defendant

COMPLAINT

Jury Demand

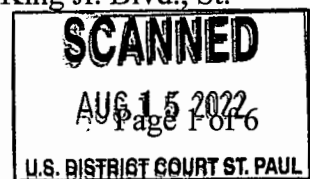
1. Yes

Parties

2. Decedent LaVonne Aspley was a United States citizen, and resident of Excelsior, Minnesota.

3. Susanne Aspley, 23975 Yellowstone Trail, Excelsior MN 55331, daughter of LaVonne Aspley, is bringing forth this action as the duly appointed executor of the estate as described in LaVonne Aspley's Last Will and Testament.

4. Defendant #1 Governor Tim Walz, Office of Governor Tim Walz, Karl Procaccini - General Counsel & Deputy Chief of Staff, 30 State Capitol 75 Rev Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155



5. Defendant #2 The State of Minnesota, Office of Attorney General Keith Ellison, 130 State Capitol 75 Rev Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155

6. Defendant #3 Jan Malcolm, Minnesota Department of Health, Legal Unit Robin Benson, 625 Robert Str. N. St Paul, MN 55155

Jurisdiction

7. Venue in the is proper pursuant to 28 U.S.C. § 1391 Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question for the United States District Court for the District of Minnesota.

8. Basis for venue in the District of Minnesota is all parties of residents of Minnesota.

Statute of Limitations

9. The United States Supreme Court has directed that 42 USC §1988 “requires courts to borrow and apply to all §1983 claims the one most analogous state statute of limitations.” *Owens v Okure*, 488 US 235, 240 (1989).

10. Violations of the 14th Amendment are typically remedied via 42 U.S.C. § 1983. That section provides for no particular statute of limitations.

11. 42 U.S.C. § 1988(a) has been held to mean that the state-law statute of limitations for tort actions (i.e. general personal injury claims) applies to a claim under § 1983.

12. Minn. Stat. § 573.02, subd. 1 (2020) limits Wrongful Death Claims to a period of three years.

13. Plaintiff is within the statute of limitations.

Statement of the Claim

First Claim for Relief Deprivation of Life

14. In violation of the Fourteenth Amendment to the Constitution of the United States protecting the life of LaVonne Aspley.

15. 42 USC Section 1983) is a federal law that allows citizens to sue in certain situations for violations of rights conferred by the US Constitution or federal laws.

**Second Claim for Relief
Deprivation of Rights Under Color of Law**

16. In violation of Federal Civil Rights Statute, Title 18, U.S.C., Section 242 - Deprivation of Rights Under Color of Law, that forbids any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

17. 42 USC Section 1983 is a federal law that allows citizens to sue in certain situations for violations of rights conferred by the US Constitution or federal laws.

Statement of Claim

18. LaVonne Aspley was born on X/X/1933, in Sheyene North Dakota.

19. LaVonne Aspley died of Covid disease on May 12, 2020.

20. In October 2019, LaVonne Aspley moved to Excelsior Estates Nursing Home to recover from a broken hip resulting from a fall.

21. During the period January through May 2020, Residents in long-term care settings accounted for only 21% of Minnesota's total COVID-19 cases, yet they experienced 81% of total COVID-19 deaths.

22. On May 20, 2020, the Star Tribune reports, "Virus pipeline to elder care", which states: "Early in the pandemic, the Minnesota Department of Health turned to nursing homes and other long-term care facilities to relieve the burden on hospitals that were at risk of being overwhelmed by COVID-19 patients."

23. The respiratory illness is known to be especially lethal to older adults and those living in nursing homes and assisted-living facilities, where people live in close quarters.

24. Living conditions inside nursing homes are typically two to a room, with two rooms sharing a bathroom, resulting in a total of four people using same bathroom.

25. On March 13, 2020, Walz issued the Lockdown order, and nursing homes were closed to visitors yet covid positive patients were soon allowed to be transferred from hospitals to recover in nursing homes to include Excelsior Estates.

26. On April 29, 2020, the Walz Administration signed a lease for Alternate Care Site in Roseville, yet failed to utilize this facility to address hospital capacity issues.

28. Walz also failed to set up a field hospital, medical ship in Duluth Harbor, or utilize the hundreds of vacant hotels in the metro area as any alternative.

29. On May 1, 2020, Decedent complains on phone call to plaintiff there are new covid positive patients in her facility.

30. On May 5, 2020, plaintiff received phone call from nursing home that decedent tested positive for covid.

31. On May 7 Walz introduces his Five Point Battle Plan for assisting nursing homes, but fails to halt the transfer of covid positive patients into those nursing homes.

32. On May 12, 2020, LaVonne Aspley died from covid related symptoms.

33. On May 20, 2020, Walz clearly knew that allowing covid positive patients into nursing homes would result in death to those residents by the fact he purchased a 6.9 million cold storage warehouse to be used as a morgue, according the Star Tribune in article titled "State of Minnesota buys former produce warehouse to store bodies of COVID victims".

34. On May 20, 2020, the Star Tribune reports, "Virus pipeline to elder care", which states: "Nursing homes accepting infected patients, even as death toll mounts. Despite the devastating death toll, Minnesota nursing homes are still being allowed by state regulators to admit coronavirus patients who have been discharged from hospitals.

35. On May 27, 2020, the Park Rapids Enterprise reports on Walz's News Conference. The article states: "80% of the deaths in the state coming in long-term care settings, critics have suggested the homes are not built to allow safe distancing.

36. During the Governor Walz' news conference on May 27, 2020, when asked, Walz said "I think it's important to remember these are folks that went to the hospital, they recovered, but they're still in that mode, and they're going back to their home, and this is where they live," said Gov. Tim Walz during an afternoon press conference. "The rest of us, we may self-isolate, but where are we going to put (these) people?" Walz then continues, "This was not a mistake. It wasn't like no one thought about this. There was complexity in how you deal with this."

37. The May 27, 2020 Park Rapids Enterprise article reports that when asked about the practice of sending covid positive patients into healthy nursing homes, Jan Malcolm, Minnesota State Health Commissioner, said, "That's certainly a question a lot of people are asking. It has been an affirmative part of our plan all along (however), to get people out of a hospital as soon as they no longer need hospital-level care, both for their own protection — hospital-acquired infections are a real concern — as well to free up acute care capacity."

38. Walz failed due diligence in finding an appropriate, intelligent commissioner for the Minnesota Department of Health.

39. In January, 2018, Walz appointed Jan Malcolm as commissioner for the Minnesota Department of Health knowing she only has a four year degree in Pre Med and Philosophy.

40. On June 5, 2020, Jan Malcolm sent a followup letter to Senator Housely in response to the Senator's questions about placing covid patients into Minnesota nursing homes.

41. Jan Malcolm's June 5, 2020 letter states in part: "Since March, "To date, 319 of the 863 outbreak facilities have had a COVID-positive patient transferred from another facility or discharged back to a facility from the hospital (typically back to the facility where they resided prior to their hospitalization).

42. Jan Malcolm also admits in her June 5, 2020 letter that no alternative care site has been establish, despite the tragic death toll at nursing homes- "At this time there are no designated "COVID Support Sites." Hospitals discharge patients and long-term care facilities conduct admissions if they meet the criteria of the patient needs of care."

43. Although Walz blamed staff for infecting patients, it's shameful to blame low paid, over worked, often English as a second language direct care workers who didn't have access to masks, gloves and face shields due to supply shortages.

44. Governor Tim Walz had a responsibility to exercise reasonable care to maintain the safety of Minnesota citizen LaVonne Aspley, who at the time was a nursing home resident.

45. During March - May 12, 2020, her death, Walz breached his duty through the intentional act of directing otherwise healthy nursing homes to take in covid positive patient. He failed to take action to preserve her right to life.

46. Walz's breach of duty caused LaVonne Aspley to contract Covid in her nursing home and die.

47. LaVonne Aspley's surviving family suffers greatly from her loss of life, including the psychological trauma of knowing she died alone, confused, without family and friends to comfort her.

Relief

On First claim, a judgement for the Deprivation of Life in compensatory damages in the amount of \$500,000. with punitive damages to be determined at trial.

On the Second Claim, Deprivation of Rights Under the Color of Law, compensatory damages in the amount of \$500,00 with punitive damages to be determined at trial.

Signed this 15 day of Aug 2022

Susanne Aspley, as the Trustee
of the Estate of LaVonne Aspley, Decedent
23975 Yellowstone Trail
Excelsior MN 55331
651-395-9911